

Granny's Express, Inc., Norman L. Slutsky, Trustee in Bankruptcy and David L. Moore and Donald R. Phelps. Cases 9-CA-15804 and 9-CA-16026

10 April 1984

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND DENNIS

On 6 January 1983 the National Labor Relations Board entered its Order in the above-entitled proceeding directing Granny's Express, Inc.,¹ *inter alia*, to make whole employees David L. Moore and Donald R. Phelps for any loss of pay they may have suffered by reason of the Respondent's discrimination against them. A controversy having arisen over the amount of backpay due under the Board's Order, the Regional Director for Region 9 on 15 July 1983 issued a backpay specification and notice of hearing alleging the amounts of backpay due and notifying the Respondent that it should file a timely answer. On 22 August 1983, having obtained additional data, the Regional Director issued an amended backpay specification and order rescheduling hearing alleging the amounts of backpay due and notifying the Respondent that it should file a timely answer. The Respondent failed to file an answer.

On 22 September 1983 counsel for the General Counsel filed a Motion for Summary Judgment. On 29 September 1983 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record, the Board makes the following

Ruling on the Motion for Summary Judgment

Section 102.54 of the Board's Rules and Regulations provides that if an answer is not filed within 15 days from the service of the specification the Board may find the specification to be true.

The amended backpay specification states that the Respondent shall file an answer within 15 days from the date of the amended specification, and that if the answer fails to deny the amended specification's allegations in the manner required under the Board's Rules and Regulations, and the failure to do so is not adequately explained, the allegations shall be deemed to be true. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the General Counsel, by letter dated 7 September 1983, notified the Respondent that, if an answer was not filed by 16 September 1983, a Motion for Summary Judgment would be filed.

In the absence of any explanation for the Respondent's failure to file timely answers, we grant the General Counsel's Motion for Summary Judgment.²

Accordingly, the Board concludes that the net backpay due the discriminatees, David L. Moore and Donald R. Phelps, is as stated in the computations of the amended backpay specification, and orders the Respondent to pay those amounts to the discriminatees.

ORDER

The National Labor Relations Board orders the Respondent, Granny's Express, Inc., Norman L. Slutsky, Trustee in Bankruptcy, Cincinnati, Ohio, its officers, agents, successors, and assigns, to make whole each of the employees named below by paying them the amounts set forth adjacent to their names, plus interest computed in the manner prescribed in *Florida Steel Corp.*, 231 NLRB 651 (1977),³ and accrued to the date of payment, minus tax withholdings required by law:

David L. Moore	\$1,207.95
Donald R. Phelps	\$4,797.90

¹ Granny's Express ceased doing business as of 30 November 1982 and instituted voluntary bankruptcy proceedings about 18 February 1983. Norman L. Slutsky was duly appointed Trustee in Bankruptcy of Granny's Express, Inc. Granny's Express, Inc., Norman L. Slutsky, Trustee in Bankruptcy, is hereinafter referred to as the Respondent.

² In granting the General Counsel's Motion for Summary Judgment, Chairman Dotson specifically relies on the total failure of the Respondent to respond to the allegations of the General Counsel's amended backpay specification. Thus the Chairman regards this proceeding as being essentially a default judgment which is without precedential value.

³ See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).